

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**COMMUNITY BUS LINES/
HUDSON COUNTY EXECUTIVE EXPRESS**

and

Case No: 22-CA-24617

PRODUCTION WORKERS UNION, LOCAL #148

Bert Dice-Goldberg, Esq., Counsel for the General Counsel.
Michael T. Scaraggi, Esq., (Oransky, Scaraggi, Borg &
Abbamonte, P.C.) Counsel for the Union.
James Novello, Esq., (Parro, Novello & Francis, P.C.)
Counsel for the Respondent.

DECISION

Statement of the Case

HOWARD EDELMAN, Administrative Law Judge. This case was tried in Newark, New Jersey on November 27 and December 10, 2001.

Pursuant to charges filed by Production Workers Union Local 148, herein called the Union, against Community Bus Lines/Hudson County Executive Express, herein called Respondent, the Regional Director for Region 22 issued a complaint dated September 27, 2001, alleging violations of Section 8 (a) (1) (3) and (5) of the Act.

On December 10, during the trial of this case, Respondent withdrew its answer. Based upon the entire record herein I make the following findings of facts and conclusions of law.¹ At all material times Respondent, is a New Jersey corporation, with an office and place of business in Jersey City, New Jersey, herein called Respondent's Jersey City facility, has been engaged in the intrastate and interstate transport of passengers via coach bus. During the twelve month period ending May 31, 2001, Respondent, in conducting its business operations described above, derived gross revenues in excess of \$250,000. During the twelve month period ending May 31, 2001, Respondent, in conducting its business operations, purchased and/or leased goods and supplies valued in excess of \$5,000 directly from suppliers located outside the State of New Jersey.

It is admitted and I conclude Respondent is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

¹ All parties to this case waived the right to file briefs.

It is admitted and I conclude the Union has been a labor organization within the meaning of Section 2(5) of the Act.

The following individuals hold the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Jorge Bedoya	President
Gustabo Castro	Vice President/Dispatcher
Amy Vidal	Operations Manager

The following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: all full-time and regular part-time drivers, owner operators, helpers, mechanics, maintenance employees and janitors employed by the Employer at its Jersey City, New Jersey facility; but excluding all office clerical employees, dispatchers, independent contractors, guards and supervisors as defined in the Act.

From about February 5, 2001 to about March 28, 2001, a majority of the Unit designated and selected the Union as their representative for the purposes of collective bargaining with the Employer, and since March 28, 2001, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

Respondent, by Jorge Bedoya, its president in January, and again about February 9, at its Jersey City facility, interrogated its employees about their concerted activities and the concerted activities of other employees.

Bedoya in January, February, March, April 1, and May 31, at its Jersey City facility, threatened its employees with discharge because of their concerted and Union activities and because they took part in processes before the Board.

Bedoya in January, and again on about February 10, at its Jersey City facility, orally promulgated, and since then has maintained, a rule prohibiting employees from engaging in protected concerted activities.

Bedoya in March at its Jersey City facility, created an impression among its employees that their Union and protected concerted activities were under surveillance by Respondent.

Bedoya in March, at the Port Authority, New York bus terminal, and again at its Jersey City facility, threatened it would report the immigration status of its employees to the Immigration and Naturalization Service because of their concerted and Union activities and because they took part in processes before the Board in related Cases 22-RC-12050 and 22-RC-12094.

Bedoya in March, at its Jersey City facility, threatened its employees with plant closure because of their concerted and Union activities and because they took part in processes before the Board.

Bedoya in May 1, at its Jersey City facility, threatened its employees with loss of their buses, threatened reduction in the number of passengers it would permit its employees to carry and threatened its employees with discharge because of their concerted and Union activities and because they took part in processes before the Board.

Bedoya in May, 2001, at its Jersey City facility, threatened its employees with deportation because of their concerted and Union activities and because they took part in processes before the Board in related Cases 22-RC-12050 and 22-RC-12094.

5 Bedoya on June 26, 2001, at its Jersey City facility, informed its employees that it would be futile for them to select the Union as their bargaining representative.

Respondent by Amy Vidal, its operations manager, in June, 2001, at its Jersey City facility, threatened its employees with discharge because of their Union activities and because
10 they took part in processes before the Board in related Cases 22-RC-12050 and 22-RC-12094.

Respondent by Gustavo Castro, its vice-president in January, at its Journal Square, Jersey City, NJ bus terminal, interrogated its employees about their protected concerted activities and the protected concerted activities of other employees.
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Castro, in April, and again about July, at the Journal Square, Jersey City, NJ bus terminal, threatened its employees with discharge because of their Union activities and because they took part in processes before the Board in related Cases 22-RC-12050 and 22-RC-12094.

20 I find that the above described activities by Bedoya, Vidal, and Castro constitute violations of Section 8 (a) (1) of the Act.

During the period of December, 2000 through February, 2001, Respondent's employees engaged in protected concerted activities with other employees for the purposes of collective bargaining and other mutual aid and protection, by participating in meetings regarding the wages, hours and working conditions of Respondent's employees.
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About the dates set forth opposite their names, Respondent discharged the employees named below:

30	Mario Blanco	June 1, 2001
	Lourdes Melendez	June 1, 2001
	Ruben Moscoso	June 1, 2001
	Fernando Pantoja	June 1, 2001
	Jorge Luna	June 1, 2001
35	Miguel Pantoja	July 1, 2001
	Fabian Moscoso	June 1, 2001
	Hugo Guadalupe	June 7, 2001
	Patricio Guadalupe	June 18, 2001
	Jairo Tejeiro	February 9, 2001
40	Geovanny Paredes	February 9, 2001
	Segunda Granja	October 19, 2001

I conclude that by such activity, Respondent has violated Section 8 (a) (1) and (3) of the Act.
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In February, Respondent changed the schedules and shifts of its employees, prevented its drivers from picking up passengers and instituted a rule prohibiting its drivers from working on weekends. I find such conduct violated Section 8 (a) (1) and (3) of the Act.

About March 26, Respondent suspended Jesus Pimentel. I find such conduct violated Section 8 (a) (1) and (3) of the Act.

About March, Respondent began charging its employees late fees on insurance payments, corporation and terminal fees. I find such conduct violated Section 8 (a) (1) and (3) of the Act.

5 About January, and again about May 11, Respondent demanded its employees produce immigration and other documentation because of their concerted and Union activities. I find such conduct violated Section 8 (a) (1) and (3) of the Act.

10 About May 31, Respondent canceled the lease on one of its employee Rodrigo Guadalupe's buses. I find such conduct violated Section 8 (a) (1) and (3) of the Act.

About June 1, 2001, Respondent issued written warnings to its employees. I find such conduct violated Section 8 (a) (1) and (3) of the Act.

15 Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

20 The Respondent having discriminatorily discharged its employees and discriminatorily cancelled the leases of its employees' buses, it must offer them reinstatement and offer to reinstate the leases on their buses and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of discharge or cancellation to the date of valid offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Additionally, in order to obviate any additional federal and/or state income taxes that the discriminatees may incur as a result of the lump sum payments of their back pay awards, Respondent must reimburse the discriminatees for any such extra taxes as they may incur.

30 As certain of the discriminatees' made advance payments to Respondent prior to their unlawful discharges for insurance, corporate and other fees for periods during which they were not employed by Respondent or during which the leases on their buses had been unlawfully cancelled by Respondent, I shall recommend that the Respondent be ordered to reimburse any such advance payments.

40 As the unfair labor practices in which I have found Respondent has engaged are so serious and substantial in character that the possibility of erasing the effects of these unfair labor practices and of conducting a fair election by the use of traditional remedies is slight, and as Respondent has admitted that the a majority of its employees have expressed their sentiments regarding representation, I shall recommend that Respondent be ordered to bargain with the Union, upon request.

45 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Community Bus Lines/Hudson County Executive Express, shall

5 1. Cease and desist from:

 (a) Failing and refusing to bargain collectively with Production Workers Union
10 Local 148, AFL-CIO, herein the Union, as the exclusive bargaining representative of all
 the Respondent's employees in the appropriate unit.

 (b) Interrogating its employees about their concerted activities and the
 concerted activities of other employees.

15 (c) Threatening its employees with discharge because of their concerted and
 union activities, and because they took part in processes before the National Labor
 Relations Board, herein the Board.

20 (d) Promulgating or maintaining rules prohibiting employees from engaging in
 concerted activities.

 (e) Creating an impression among its employees that their union and
 concerted activities are under surveillance.

25 (f) Demanding that its employees produce immigration and other
 documentation because of their concerted and union activities and because they took
 part in processes before the Board.

30 (g) Threatening to report the immigration status of its employees to the
 Immigration and Naturalization Service, or threatening its employees with deportation
 because of their concerted and union activities and because they took part in processes
 before the Board.

35 (h) Threatening its employees with plant closure because of their concerted
 and union activities and because they took part in processes before the Board.

40 (i) Threatening its employees with loss of their buses, or threatening
 reduction in the number of passengers it will permit its employees to carry on their
 buses because of their concerted and union activities and because they took part in
 processes before the Board.

45 (j) Informing its employees that it would be futile for them to select the Union,
 or any labor organization, as their bargaining representative.

 (k) Suspending, discharging or canceling the leases on its employees' buses
 because of their concerted and union activities and because they took part in processes
 before the Board.

 (l) Charging its employees late fees on insurance payments, corporation and

terminal fees because of their concerted and union activities and because they took part in processes before the Board.

(m) Prohibiting its employees from working on weekends, changing the schedules and shifts of its employees or preventing employees from picking up passengers because of their concerted and union activities and because they took part in processes before the Board.

(n) Issuing written warnings to its employees because of their concerted and union activities and because they took part in processes before the Board.

(o) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize and, on request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers, owner-operators, helpers, mechanics, maintenance employees and janitors employed by the Employer at its Jersey City, New Jersey facility, but excluding all office clerical employees, dispatchers, independent contractors, guards and supervisors as defined in the Act.

(b) Offer the following employees, who have been found to have been illegally discharged, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision, and reimburse them for any extra federal and/or state income taxes that would or may result from the lump sum payment of their back pay award:

Maria Blanco, Lourdes Melendez, Ruben Moscoso, Fernando Pantoja, Jorge Luna, Miguel Pantoja, Fabian Moscoso, Hugo Guadalupe, Patricio Guadalupe, Jairo Tejeiro, Geovanny Paredes, and Segunda Granja.

(c) Rescind the suspension given to Jesus Pimentel and make him whole for any loss of earnings and other benefits they may have incurred, and reimburse him for any extra federal and/or state income taxes that would or may result from the lump sum payment of his back pay award.

(d) Remove from its files any references to the unlawful discharges and suspension above and notify the employees in writing that this has been done and that these discharges and suspension will not be used against them in any way.

(e) Reimburse all advance payments for insurance, corporate and other fees made to the Employer by the above employees.

(f) Refund any late fees on insurance payments, corporation and terminal fees charged to employees since March 2001.

(g) Reinstate the lease on Rodrigo Guadalupe's buses.

(h) Rescind written warnings issued to employees since June 1, 2001, remove from its files any references to these written warnings, and notify the affected employees in writing that this has been done and that these written warnings will not be used against them in any way.

(i) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, schedules, timecards, personnel records and reports and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(j) Post at its Jersey City, New Jersey facility, in English and Spanish, copies of the attached Notice marked "Appendix."³ Copies of the Notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated at New York, New York

Howard Edelman
Administrative Law Judge

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the Notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

The National Labor Relations Board has found that we violated the national Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights,

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities

WE WILL NOT interrogate our employees about their concerted activities and the concerted activities of other employees.

WE WILL NOT threaten our employees with discharge because of their concerted and union activities, and because they took part in processes before the National Labor Relations Board.

WE WILL NOT promulgate, or maintain, rules prohibiting employees from engaging in concerted activities.

WE WILL NOT create an impression among our employees that their union and concerted activities are under surveillance by the Employer.

WE WILL NOT demand that our employees produce immigration and other documentation because of their concerted and union activities and because they took part in processes before the Board.

WE WILL NOT threaten to report the immigration status of our employees to the Immigration and Naturalization Service, or threaten our employees with deportation because of their concerted and union activities and because they took part in processes before the Board.

WE WILL NOT threaten our employees with plant closure because of their concerted and union activities and because they took part in processes before the Board.

WE WILL NOT threaten our employees with loss of their buses, or threaten reduction in the number of passengers we will permit our employees to carry on their buses because of their concerted and union activities and because they took part in processes before the Board.

5

WE WILL NOT inform our employees that it would be futile for them to select Production Workers Union, Local #148, AFL-CIO, herein the Union, or any labor organization as their bargaining representative.

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WE WILL NOT suspend, discharge or cancel the leases on our employees' buses because of their concerted and union activities and because they took part in processes before the Board.

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WE WILL NOT charge our employees late fees on insurance payments, corporation and terminal fees because of their concerted and union activities and because they took part in processes before the Board.

20

WE WILL NOT prohibit our employees from working on weekends, change the schedules and shifts of our employees or prevent our employees from picking up passengers because of their concerted and union activities and because they took part in processes before the Board.

25

WE WILL NOT issue written warnings to our employees because of their concerted and union activities and because they took part in processes before the Board.

30

WE WILL NOT fail and refuse to recognize and bargain with the Union as the exclusive-collective bargaining representative in the following appropriate Unit:

All full-time and regular part-time drivers, owner operators, helpers, mechanics, maintenance employees and janitors employed by the Employer at its Jersey City, New Jersey facility, but excluding all office clerical employees, dispatchers, independent contractors, guards and supervisors as defined in the Act.

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WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

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WE WILL reinstate Maria Blanco, Lourdes Melendez, Ruben Moscoso, Fernando Pantoja, Jorge Luna, Miguel Pantoja, Fabian Moscoso, Hugo Guadalupe, Patricio Guadalupe, Jairo Tejeiro, Geovanny Paredes, and Segunda Granja, to their former jobs, rescind the suspension given to Jesus Pimentel and make them whole for any loss of earnings and other benefits they may have incurred, and reimburse them for any extra federal and/or state income taxes that would or may result from the lump sum payment of their back pay award.

45

WE WILL remove from our files any references to the discharges and suspension above and will notify these employees in writing that this has been done and that these discharges and suspension will not be used against them in any way.

WE WILL reimburse all advance payments for insurance, corporate and other fees made to the Employer by Maria Blanco, Lourdes Melendez, Ruben Moscoso, Fernando Pantoja, Jorge Luna, Miguel Pantoja, Fabian Moscoso, Hugo Guadalupe, Patricio Guadalupe.

WE WILL refund any late fees on insurance payments, corporation and terminal fees that we charged to our employees since March 2001.

WE WILL reinstate the lease on Rodrigo Guadalupe's buses.

WE WILL rescind written warnings issued to our employees since June 1, 2001, remove from our files any references to these written warnings, and will notify the affected employees in writing that this has been done and that these written warnings will not be used against them in any way.

WE WILL recognize and, upon request, bargain with the Union as the exclusive-collective bargaining representative in the Unit.

Community Bus Lines/Hudson County Executives Express

(Employer)

Dated _____ By: _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 20 Washington Place, 5th Floor, Newark, New Jersey 07102–2570, Telephone 973–645–3652.